

## CHAPTER 438

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**CRIMINAL LAW AND PROCEDURE**


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**HOUSE BILL 22-1061**

BY REPRESENTATIVE(S) Amabile and Benavidez, Bacon, Bernett, Cutter, Exum, Gonzales-Gutierrez, Hooton, Jodeh, Kennedy, Lindsay, McCluskie, Michaelson Jenet, Ricks, Sirota;  
also SENATOR(S) Gonzales, Buckner, Lee.

**AN ACT**

**CONCERNING MODIFICATIONS TO NOT GUILTY BY REASON OF INSANITY, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 16-8-105.5, **amend** (4) and (5) as follows:

**16-8-105.5. Procedure after plea for offenses committed on or after July 1, 1995.** (4) (a) (I) IF THE TRIER OF FACT FINDS THE DEFENDANT NOT GUILTY BY REASON OF INSANITY, AT THE REQUEST OF THE DEFENDANT, THE COURT MAY CONTINUE THE BOND PURSUANT TO SECTION 16-4-108 TO ALLOW THE DEFENDANT TO REMAIN AT LIBERTY OR SET A HEARING TO MODIFY THE BOND PURSUANT TO SECTION 16-4-109 AND DELAY FINAL DISPOSITION, DELAY FORMAL ENTRY OF THE FINDING OF NOT GUILTY BY REASON OF INSANITY, AND STAY THE COMMITMENT OF THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT OF HUMAN SERVICES PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION UNTIL THE CONCLUSION OF THE INITIAL RELEASE HEARING REQUIRED PURSUANT TO SECTION 16-8-115 (1)(a). IF THE DEFENDANT IS ON BOND, THE COURT SHALL ORDER THE DEPARTMENT OF HUMAN SERVICES TO CONDUCT A RELEASE EXAMINATION ON AN OUTPATIENT BASIS, AS WELL AS ANY OTHER APPROPRIATE CONDITIONS OF RELEASE, INCLUDING PARTICIPATION IN OUTPATIENT TREATMENT.

(II) IN DETERMINING WHETHER TO CONTINUE OR MODIFY THE BOND, THE COURT SHALL CONSIDER THE CRITERIA DESCRIBED IN SECTION 16-4-103, AS WELL AS THAT THE DEFENDANT WAS FOUND NOT GUILTY BY REASON OF INSANITY RATHER THAN CONVICTED, THE DEFENDANT'S TREATMENT NEEDS, THE AVAILABILITY OF TREATMENT IN THE COMMUNITY, THE ABILITY OF THE DEPARTMENT OF HUMAN

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

SERVICES TO CONDUCT A RELEASE EVALUATION IN THE COMMUNITY, WHETHER THE DEPARTMENT OF HUMAN SERVICES CAN TIMELY ADMIT THE DEFENDANT, AND THE USEFULNESS OF AN OBSERVATION PERIOD AS PART OF THE RELEASE EVALUATION.

(III) (A) THE COURT SHALL NOT DELAY THE FINAL DISPOSITION AND ENTRY OF FINDING OF NOT GUILTY BY REASON OF INSANITY UNLESS THE DEFENDANT IS AT LIBERTY AND REQUESTS A DELAY, IN WHICH CASE THE COURT MAY DELAY THE FINAL DISPOSITION TO ALLOW THE DEFENDANT TO POST BOND FOR AN OUTPATIENT RELEASE EXAMINATION.

(B) IF THE DEFENDANT IS ON BOND, THE DISTRICT ATTORNEY OR A BONDING COMMISSIONER MAY FILE WITH THE COURT A VERIFIED MOTION TO REVOKE THE DEFENDANT'S BOND PURSUANT TO SECTION 16-4-109; EXCEPT THAT, IF THE COURT FINDS THE DEFENDANT VIOLATED A BOND CONDITION, THE COURT MAY REVOKE THE BOND AND ENTER THE FINAL DISPOSITION OF NOT GUILTY BY REASON OF INSANITY AND ORDER THE DEFENDANT COMMITTED TO THE DEPARTMENT OF HUMAN SERVICES.

(IV) THIS SUBSECTION (4)(a) DOES NOT APPLY IF THE COURT FINDS THAT THE CRIME FOR WHICH THE DEFENDANT IS FOUND NOT GUILTY BY REASON OF INSANITY:

(A) IS A CLASS 1 OR CLASS 2 FELONY;

(B) RESULTED IN ANOTHER PERSON SUFFERING SERIOUS BODILY INJURY OR DEATH;

(C) INVOLVED THE DEFENDANT USING A DEADLY WEAPON; OR

(D) INVOLVED FELONY UNLAWFUL SEXUAL BEHAVIOR PURSUANT TO SECTION 16-22-102 (9).

(b) If the trier of fact finds the defendant not guilty by reason of insanity, UNLESS DELAYED PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION, the court shall commit the defendant to the custody of the department of human services until such time as the defendant is found eligible for release. The executive director of the department of human services shall designate the state facility at which the defendant shall be held for care and psychiatric treatment and may transfer the defendant from one facility to another if in the opinion of the director it is desirable to do so in the interest of the proper care, custody, and treatment of the defendant or the protection of the public or the personnel of the facilities in question.

(5) This section ~~shall apply~~ APPLIES to offenses committed on or after July 1, 1995; EXCEPT THAT SUBSECTION (4)(a) OF THIS SECTION APPLIES TO INDIVIDUALS FOUND NOT GUILTY BY REASON OF INSANITY ON OR AFTER SEPTEMBER 1, 2022.

**SECTION 2.** In Colorado Revised Statutes, 16-8-115, **amend** (1); and **add** (2.5) as follows:

**16-8-115. Release from commitment after verdict of not guilty by reason of insanity or not guilty by reason of impaired mental condition.** (1) (a) (I) UPON AN INITIAL COMMITMENT FOLLOWING A FINDING OF NOT GUILTY BY REASON OF INSANITY PURSUANT TO SECTION 16-8-105.5 (4)(b), OR UPON DELAYING FINAL

ENTRY OF THE FINDING OF NOT GUILTY BY REASON OF INSANITY PURSUANT TO SECTION 16-8.5-105.5 (4)(a), THE COURT SHALL SCHEDULE AN INITIAL RELEASE HEARING NO LATER THAN ONE HUNDRED AND TWENTY DAYS FROM THE INITIAL COMMITMENT. THE COURT SHALL ORDER THE DEPARTMENT OF HUMAN SERVICES TO COMPLETE A RELEASE EXAMINATION NO LATER THAN THIRTY DAYS PRIOR TO THE INITIAL RELEASE HEARING. THE DEFENDANT MAY REQUEST AN ADDITIONAL RELEASE EXAMINATION BY A MEDICAL EXPERT IN MENTAL HEALTH DISORDERS OF THE DEFENDANT'S CHOOSING PURSUANT TO SECTION 16-8-108. THE COURT MAY CONTINUE THE HEARING BEYOND ONE HUNDRED AND TWENTY DAYS UPON A FINDING OF GOOD CAUSE OR IF NECESSARY TO CONDUCT A SECOND EVALUATION OF THE DEFENDANT.

(II) THE COURT SHALL CONDUCT THE INITIAL RELEASE HEARING. AT THE INITIAL RELEASE HEARING, IF ANY EVIDENCE IS INTRODUCED THAT SHOWS THE DEFENDANT IS INELIGIBLE FOR CONDITIONAL RELEASE, THE DEFENDANT HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT MEETS THE APPLICABLE TEST FOR CONDITIONAL RELEASE PURSUANT TO SECTION 16-8-120. IF THE COURT FINDS THE DEFENDANT ELIGIBLE FOR CONDITIONAL RELEASE, THE COURT MAY IMPOSE SUCH TERMS AND CONDITIONS AS THE COURT DETERMINES ARE IN THE BEST INTEREST OF THE DEFENDANT AND THE COMMUNITY. IF THE COURT FINDS THE DEFENDANT INELIGIBLE FOR CONDITIONAL RELEASE, THE COURT SHALL COMMIT OR CONTINUE THE PREVIOUS COMMITMENT OF THE DEFENDANT TO THE PHYSICAL CUSTODY OF THE DEPARTMENT OF HUMAN SERVICES.

(III) THIS SUBSECTION (1)(a) APPLIES TO INDIVIDUALS FOUND NOT GUILTY BY REASON OF INSANITY ON OR AFTER SEPTEMBER 1, 2022.

(b) FOLLOWING THE INITIAL RELEASE HEARING PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, the court may order a release hearing at any time on its own motion, on motion of the prosecuting attorney, or on motion of the defendant. The court shall order a release hearing upon receipt of the report of the chief officer of the institution in which the defendant is committed that the defendant no longer requires hospitalization, as provided in section 16-8-116. ~~or upon motion of the defendant made after one hundred eighty-two days following the date of the initial commitment order.~~ Except for the ~~first hearing following the initial commitment order~~ INITIAL RELEASE HEARING, unless the court for good cause shown permits, the defendant is not entitled to a hearing within one year subsequent to a previous hearing.

(c) BEGINNING SEPTEMBER 1, 2022, THE CHIEF OFFICER OF THE INSTITUTION IN WHICH THE DEFENDANT IS COMMITTED SHALL ANNUALLY SUBMIT A RELEASE EXAMINATION REPORT TO THE COURT CERTIFYING WHETHER THE DEFENDANT CONTINUES TO MEET THE CRITERIA FOR ONGOING INPATIENT HOSPITALIZATION OR MEETS THE APPLICABLE TEST FOR RELEASE PURSUANT TO SECTION 16-8-120. THE REPORT MUST BE SUBMITTED EACH YEAR BY THE DATE ON WHICH THE DEFENDANT WAS INITIALLY COMMITTED FOR INPATIENT HOSPITALIZATION UNLESS ANOTHER RELEASE EXAMINATION IS ORDERED WITHIN THE TWELVE MONTHS PRECEDING SUCH DATE. THE RELEASE EXAMINATION REPORT MUST INCLUDE THE INFORMATION REQUIRED FOR A RELEASE EXAMINATION PURSUANT TO SUBSECTION (2.5) OF THIS SECTION. THE INSTITUTION SHALL PROVIDE A COPY OF THE REPORT TO THE DEFENDANT, THE PROSECUTING ATTORNEY, AND ANY OTHER ATTORNEY OF RECORD.

UPON RECEIPT AND AFTER REVIEW OF THE REPORT, THE COURT MAY ORDER A RELEASE HEARING ON ITS OWN MOTION, ON MOTION OF THE PROSECUTING ATTORNEY, OR ON MOTION OF THE DEFENDANT.

(2.5) IN ADDITION TO ANY OTHER REQUIREMENT PURSUANT TO THIS SECTION, THE RELEASE EXAMINATION REPORT MUST INCLUDE:

(a) A SUMMARY OF THE MATERIALS REVIEWED, ASSESSMENTS CONDUCTED, AND OTHER BASES OF OPINION RENDERED;

(b) THE DEFENDANT'S CURRENT DIAGNOSIS AND WHETHER THE DEFENDANT'S SYMPTOMS OF MENTAL DISEASE OR DEFECT ARE IN REMISSION;

(c) INFORMATION ABOUT MEDICATIONS CURRENTLY PRESCRIBED TO THE DEFENDANT AND WHETHER THE DEFENDANT IS COMPLIANT WITH TAKING THE PRESCRIBED MEDICATIONS;

(d) A SUMMARY OF THE TREATMENT PROVIDED TO THE DEFENDANT SINCE THE LAST RELEASE EXAMINATION, IF APPLICABLE;

(e) AN INITIAL ASSESSMENT OF THE DEFENDANT'S RISK OF REOFFENDING, INCLUDING A SUMMARY OF THE DEFENDANT'S TREATMENT NEEDS BY UTILIZING EVIDENCE-BASED STANDARDS OF INDIVIDUALIZED TREATMENT AND MANAGEMENT OF PEOPLE ACQUITTED BY REASON OF INSANITY;

(f) A SUMMARY OF THE SPECIFIC TREATMENT OPTIONS AVAILABLE TO THE DEFENDANT IN THE COMMUNITY AND THE SPECIFIC TREATMENT THE DEFENDANT MAY RECEIVE AT A FACILITY DESIGNATED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES;

(g) A SUMMARY OF WHETHER AND HOW ONGOING RISKS COULD BE MANAGED IF PLACEMENT IN THE COMMUNITY WERE GRANTED; AND

(h) AN OPINION AS TO WHETHER THE DEFENDANT CURRENTLY MEETS THE APPLICABLE TEST FOR RELEASE, AS DESCRIBED IN SECTION 16-8-120, CITING SPECIFIC FACTS AND EVIDENCE SUPPORTING THE OPINION.

**SECTION 3. Appropriation.** (1) For the 2022-23 state fiscal year, \$868,271 is appropriated to the department of human services for use by the office of behavioral health. This appropriation is from the general fund. To implement this act, the office may use this appropriation as follows:

(a) \$721,881 for personal services related to the mental health institute at Pueblo, which amount is based on an assumption that the office will require an additional 1.6 FTE;

(b) \$540 for operating expenses related to the mental health institute at Pueblo;

(c) \$3,720 for capital outlay related to the mental health institute at Pueblo; and

(d) \$142,130 for forensic services administration, which amount is based on the

assumption that the office will require an additional 0.4 FTE.

**SECTION 4. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 8, 2022